



## COMPANIES ACT, 2013: A CHANGE TOWARDS BETTERMENT

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### ABSTRACT

#### KEYWORDS:

*Body corporate, corporate governance, CSR, OPC*

*This paper attempts to find the key features of a company along with changes taken place in companies Act 2013 with respect to all other previous companies Act. This paper also discusses the new concept given in companies act such as OPC, women director, CSR etc.*

*In the end this paper concludes that, the changes made in present companies act are indeed for betterment provided it is implemented in letter and spirit by all the stakeholders involved such as director, members, manager and shareholders.*

*This paper also examines the reason as to why such changes were needed.*

### INTRODUCTION

The word company is derived from the Latin word "COM" which means coming together and "PANY" means bread which collectively means people coming together for bread or to take their meals together.

Prof. Haney defines company as "An artificial person, created by laws, having distinct name, has limited liability and perpetual succession".

- Definition given by Prof. Haney above more or less defines almost all the features of a company. To understand the company as a layman one can define company as voluntary association of person, who come together for a common purpose that could be making profit or to run a company for some charitable purpose such as promotion of arts, commerce, sports, religion, culture etc.

However the Companies Act defines the company as "Company means company, incorporated under this act or any previous company law".

Previous company laws means:

- a. Laws present before 1866
- b. Indian Companies Act, 1866
- c. Indian Companies Act, 1882
- d. Indian Companies Act, 1913
- e. Registration of transferred companies ordinance, 1942
- f. Portuguese Commercial Code
- g. Indian Companies Act, 1956.

It took around six decades by the Indian parliament to pass an act to overhaul the companies. The last time any act passed was companies act, 1956. Yes, in between many changes were incorporated but that was just in the form of amendments. It became a necessity in the year 2013 to make

an act for the companies in the light of tremendous changes that occurred in last six decades all over the world mainly because of followance of policy of globalization by government in most part of the world leading to world becoming a global village.

Task was not so easier for the framers of the companies act as they had to incorporate the changes taking place in the world and also at the same time keeping in mind the traditional companies act structure and its values in Indian societies.

Before continuing further it is pertinent now to discuss the history of companies Acts.

### OBJECTIVES OF THE STUDY

1. To understand the key features of a company.
2. To Analyze what changes are taken place and why was it needed.
3. To explore the new concept introduced by the companies Act, 2013.

### HISTORY OF COMPANIES ACTS

Existence of companies are not something new, its existence can be traced even hundreds years back namely in eleventh century in the form of merchant guilds in England who used to get permission in the form of charter from queen or king to run a body corporate. It's one of the key examples is East India Company also known as John company, which got the permission from queen Elizabeth I and was formed in the year 1600. This company had the feature of modern day chairman in the form of governor and various committees (present day director) in it. It's another example is Bank of England which got formed in the year 1694.

However, the first act bearing the title "Joint stock company" was enacted in the year 1844 in England (Joint stock Companies Act, 1850 in India). Through this act office of the registrar of Joint Stock Company was created.

In the year 1855 (Companies act 1857, in India) gave the provision of limited liability to registered company. Continuing further the first Act bearing the title “Companies” was Act of 1862 (Company Act 1866 in India).

Many development took place later in the 17<sup>th</sup> century too (Modern company laws were developed in this period). After that especially in the 20<sup>th</sup> century when Companies Act 1908 (Indian Company Act, 1913) was passed which gave the concept of private company for the first time.

After the 2<sup>nd</sup> world war, England enacted comprehensive Companies act, 1948, the similar need was felt in India too. So, under the chairmanship of H.C Bhaba, a committee was set up to look into the matter. Government accepted the recommendation of the committee and the Companies Act, 1956 was enacted. The importance of this act is that it repealed all earlier company acts and was biggest of all procedural laws in the country containing xiii parts with 658 sections, 6 tables and 15 schedules.

**KEY FEATURES OF A COMPANY**

1. Incorporated Association- A Company comes into existence when group of people 2 in case of private and 7 in case of public company get themselves registered under companies act 2013 or any previous companies acts.

2. Artificial legal person- A Company doesn't come into existence through natural birth. However, it is created through a process and has all the rights of an individual. It can do everything what a natural person can do excepts the acts which are exclusively of personal nature.
3. Limited liability- Liability of the members of the company is generally limited. However, the liability of the company is unlimited.
4. Separate legal entity- A company has legal entity distinct and separate from its members. No, members can claim their rights over company, as rightly observed in the case of “Salomon v/s Salomon”.
5. Perpetual Succession- since a Company is an artificial person, it never dies. It comes into existence through a legal process and gets over through a legal process only. Its life doesn't depend upon life of its members. Members may come and members may go but its life will remain forever.
6. Transferability of shares- Shares of public company are freely transferable. However, some restrictions are there in case of private company with regard to transferability of shares.

Major changes in companies Act, 2013 with respect to companies Act, 1956

Particulars	Companies Act, 1956	Companies Act, 2013
1. Sections	658	470
2. Chapter	13	29
3. Schedules	15	7
4. Maximum No. of members	50(private)	200(private)
5. One Person Company	This concept was not there	This concept got introduced here
6. Statutory meetings	For a public company after 1 months and before 6 months of commencement of business.	No, provision of Statutory meetings.
7. Notice of Annual General Meeting	Written notice is to be served to all the members.	Notice can be served in written or in electronic form.
8. Notice of shorter period of holding AGM	Consent of all the members are needed who are to be present and vote at the meeting.	95% of members consent who are to be present and vote is needed.
9. First Board Meeting	No, Specific time period was mentioned.	Meeting must be within 30 days of incorporation.
10. Composition of board of directors	Minimum 3 directors are needed in case of public company and 2 in case of private.	Minimum no. of directors is same. However, there is further regulation which says at least 1 Indian resident director must be in board and if it is a listed co. then 1/3 should be independent director.
11. Quorum for general meeting	Minimum 2 member in case of private and 5 in case of public company are needed.	Minimum 2 members in case of private company are needed. However, in case of public company minimum no. of members are dependent upon the company's total members. If no. of members are less than 1000 then 5 members are needed. If Members are between 1000-5000 then 15 members. If Members are greater than 5000 then 30 members are needed to form quorum.
12. Rules regarding preference shares with validity of more than 20 years.	Such preference shares were prohibited.	Such preference shares are allowed but only for making infrastructure projects.

13. Certification of financial statement	Financial statement is required to be certified by Manager or Secretary and at least two directors (one must be a managing director).	Certification can be done by the chairman alone.
14. Rules regarding shares at discount	Shares at discount were allowed	Shares at discount are prohibited except for sweat equity shares.
15. Maximum tenure of auditors	No, specific provision was mentioned	Maximum tenure is of 5 years for listed and other prescribed companies but for an audit firm maximum tenure is extended up to 10 years.
16. Rules regarding Financial year and its extension	Financial year may end on 31 <sup>st</sup> march or any other day and maximum period of financial year could be of 15 months only.	Financial year must end on 31 <sup>st</sup> march. However, financial year could be extended upto 18 months by registrar of companies.
17. Consolidation of account	Consolidation of accounts is not compulsory	Consolidation is mandatory
18. Corporate Social Responsibility	No, specific provision regarding C.S.R.	C.S.R and its committee is must for specific company.
19. Rules regarding grounds of winding up	Company can be wound up if minimum no. of members falls below minimum i.e, 2 in case of private and 7 in case of public company.	No, requirement of minimum number of members falling below statutory minimum. However, there are some additional grounds of winding up.

### NEW CONCEPTS IN COMPANIES ACT, 2013

**Dormant company/ Inactive company-** In the present era lots of new companies are formed for the purpose of holding any assets or intellectual property rights or for the future projects. Despite their next to nil operations they were required to comply with the requirements of companies act earlier. To make the business at ease, the concept of Dormant or Inactive company (Non-operational for two preceding financial year) came into picture. They are those companies which don't transact any business but is formed for the purpose of holding any assets or intellectual property rights or for a future projects without doing any significant accounting transaction.

**Associate company-** This concept was earlier too but its definition was very different then. It means a company which is significantly influenced by other company i.e, controlling of at least 20% of total share capital or business decision under an agreement.

**One person company-** This concept was introduced by J.J Irani and got placed in company's act 2013. As per sec 2(62) the term OPC means a company which has one person as member. Only a natural person who is resident of India is entitled to form OPC and become its nominee. OPC is intended to operate as small company with no minimum paid up capital but subject to maximum of 50 lakhs paid up capital or average annual turnover of 2 crores rupees in a financial year.

OPC seeks to synergize small and medium scale businesses that are based on entrepreneurial acumen and individual initiative. No, doubts it is a private company but it occupy a unique position distinct from that of a public or a private company and have endless no. of flexibility as compared to any other traditional form of businesses.

**Corporate social responsibility-** A business gets not only endless no. of benefits from the society but also it gets license to exist from the society itself, therefore it is the duty of every business form to do something in return to the society and companies are no exception to it.

Therefore, under the new act a company is expected to contribute something towards social, environmental &

economic responsibilities of the societies and all these responsibilities of the corporate is labeled as corporate social responsibility (CSR).

Sec 135(1) provides that every company having a

1. Net worth of Rs 500 crores or more,
2. Turnover of Rs 1000 crores or more, or
3. Net profit of Rs 5 crores or more

in any financial year must have a CSR committee. Further sec 135(5) says it is the board duty to ensure that every class of such company must spend at least 2 % of its average net profits of immediately preceding 3 financial years on its CSR activities every financial year. Schedule VII of the companies act 2013 lists ten activities as CSR activity for a company.

**Vigil Mechanism (Whistle blowing)-** It signifies asking for attention of top officials on wrong doing happening in the organisation. Most frauds give endless impact to companies not only financially but also in the form of loss of goodwill and reputation till endless no. of years. Thus it is of utmost importance to corporate to introduce such mechanism to avoid avoidable losses.

This concept is popularly known and used in the era of digitization but prior to companies act 2013 there was not much protection to the whistle blower doing the noble act for the companies and society at large.

**Women Director-** Although the constitution of India gives equal rights and opportunities to male and female but in reality it rarely happens and corporates are no exception to it. Even in developed countries such as USA and UK women make to the board roughly around 19% while India is far behind and include the women to its board at around 7%. To take the things into account and for the sake of equality companies act 2013 emphasized the concept of women directors. The Rule 3 of companies Rules 2014 provides that:

1. Every listed companies, and
2. Any other public company having paid up capital of Rs 100 crores or more or
3. Turnover of Rs 300 crores or more,

## COMPANIES ACT RECENT AMENDMENTS (2017)

1. **Changes in the definition of subsidiary-** “Subsidiary company in relation to any other company (that is to say holding company) means a company in which the holding company :
  - i. Controls the composition of board of directors or,
  - ii. Exercises or controls more than one half of the total voting power either at its own or together with one or more of its subsidiary company”.  
Now, the rule of having control upon 51% or more paid up share capital has been removed.
2. **Changes in the definition of Associate company-** There has been change in the meaning of significant influence in the definition of associate company. Now significant influence means:
  1. Control of at least 20% of total voting power or,
  - ii. Control of or participation in business decision under an agreement  
Earlier, control was related with 20% or more control on share capital of business
3. **Changes in private placement issuances-**  
Earlier in company’s act 2013, investors were permitted to renunciate their investment rights in favor of another party. But it’s not so now, this means only those investors whose names are mentioned in information memorandum can subscribe to the shares.
4. **Changes in the definition of related party-** Related party now also includes investing company or venturer of a company. Earlier, related party definition was narrower and it included, Any company which is:
  1. A holding, subsidiary or an associate company of such company or,
  2. A subsidiary of a holding company to which it is also a subsidiary
5. **Changes in provision of related party transaction through interested parties-** Earlier (2013), it required board approval for certain transaction with related parties & prohibited interested parties from voting on such resolutions.  
The amendment (2017) removed such restrictions where 90% or more members in number are relatives of promoters or are related parties.
6. **Changes in rules regarding loan and investment made by a company-**  
Companies act 2013 says that a company can’t extend loan exceeding 60% of its paid up share capital, free reserves and securities premium or 100% of its free reserves and securities premium whichever is more .  
Now, the amendment (2017) has removed employees from this restriction.

7. **Changes in rules regarding independent director pecuniary interest provision-** Independent director or their relatives were prohibited to have any pecuniary relation with company or its subsidiary prior to two immediately preceding financial year or during current financial year of his becoming independent director. Now the amendment (2017) seeks to exclude remuneration and transactions not exceeding 10% of his (independent director) total income from what constitute pecuniary relationship.

## CONCLUSION & RECOMMENDATIONS

The essence of present companies act 2013 is that it seeks to overhaul the company law with a view to promote self-regulation, remove lengthier regulatory approval, greater transparency in the form of disclosures and last not the least provide more autonomy and power to shareholders.

The new law also seeks to strengthen corporate governance by introducing and strengthening existing concepts such as independent directors, key managerial personnel, class action suite, secretarial audit, insider trading and CSR to name a few.

No, act is free from loopholes as mainly acts are subjects to various interpretations in case of lack of clear cut sections, as we can observe in case of vigil mechanism that there is no clear cut definition of it, so the definition and understanding is left upon to the authority and they interpret it as per their suitability which can never be consider to be an ideal situation for corporate and investors.

Similarly in case of CSR many experts believe that there is no particular authority to overlook the efficient and strict followance of CSR another limitation with the existing provision is that there is no requirements of adherence and its followance report submission to government or any other external monitoring body.

Similar is the provision regarding rotation of auditors, here the company can have the escape route of compulsorily rotation of auditor by appointing joint auditors or by hiring joint audit firms.

In case of provision regarding women directors too there are serious objections as corporate appoint them just for the sake of gender equality and rule followance principle and because of this independency of women director is lost. One can easily observe that in the name of women director decision makers usually promote their family members or female promoters are kept on board and their only task is to do check and tick exercises. Not only this, male directors are appointed as alternate directors to a women director on board and because of this the clause of women director loses its importance which can never be consider to be an ideal situation. Women directors are needed not only for the sake of gender equality for also for the healthier growth of the company too. In fortune 500 company one can see the company which is performing better has more no. of women directors on its board then otherwise. However in India things are different, as per one survey 40% of NSE listed companies run without independent women directors and only 26 boards among the fifty 500 companies have three or more women directors as on 31<sup>st</sup> March 2017.

On CSR account too much is to be done as it is directly linked with betterment of society, it should be followed strictly with some penal provision to it.

Last and not the least OPC being in its early stage of development has shown very significant promise and it being a new and simple form of business structure can act as a vehicle for economic progress in the days to come.

No act is complete until the people are determined and are full of ethics. No doubt that the company is blessed with separate legal entity but it is the directors who run them as company being an artificial person can't do anything on its own. If directors are ethically sound then present company act 2013 has enough provision to make Indian company at par with world standard. India is full of laws but we hardly find order in it. It is to the people (shareholders) to be aware of his rights and duties. Investors should be educated and informed enough to question any wrong doings on the part of management; any suspicion on wrong doing should be questioned and reported immediately. As already stated no act is free from loopholes and companies act 2013 is not an exception to it, it has the loopholes too but if the decision maker or management understand the intention of framers of law and take policy decision accordingly then only these loopholes will be of little significance and it will be a win-win situation for the company and society at large. Otherwise government will be compel to come out with stringent provisions to regulate, which can't be consider to be an ideal situation as it will give adverse signal to investors.

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